

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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BY

(1) PSKS, Inc. d/b/a Kay's
Kloset...Kay's Shoes; and
(2) Toni Cochran, L.L.C., d/b/a Toni's
Plaintiffs.

v.

(1) Leegin Creative Leather Products,
Inc.

Defendant.

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Civil Action No. 2:03-CV-107

(Ward)

**DEFENDANT LEEGIN CREATIVE LEATHER PRODUCTS, INC.'S
MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR FRAUD
AND SUPPORTING BRIEF**

Defendant Leegin Creative Leather Products, Inc. ("Leegin") files this Motion to Dismiss Plaintiffs' Claims for Fraud, and Supporting Brief (the "Motion") and respectfully would show the Court as follows:

Plaintiffs have asserted claims for fraud against Leegin. However, Plaintiffs' Petition does not satisfy the pleading requirements of FED. R. CIV. P. 9(b). Rule 9(b) is intended to identify and discard exactly this type of vaguely pleaded complaint. *See Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177-80 (5th Cir. 1997), *cert. denied*, 522 U.S. 966. Pursuant to FED. R. CIV. P. 9(b), Plaintiffs must plead the elements of fraud with particularity. *See Shushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993) ("allegations of fraud must meet a higher, or more strict, standard than the basic notice pleading"). Particularity requires inclusion of the "time, place and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby." *Williams*, 112 F.3d at 177

(citing *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1068 (5th Cir. 1994)). To satisfy Rule 9(b), a plaintiff must plead facts, not merely conclusory allegations.¹

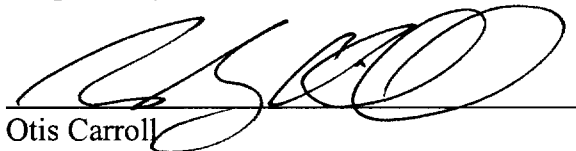
Plaintiffs' Complaint contains a scant one paragraph listing the allegations which consist of Plaintiffs' fraud claim. Basically, Plaintiffs allege that if Leegin overbilled Plaintiffs for shipping, they were victims of fraud. Plaintiffs have failed to identify not only the alleged misrepresentations, but also the who, what, when, and where of the fraud claims as required by Rule 9(b). Thus, Plaintiffs' fraud claims should be dismissed. *United States v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997) ("At a minimum, Rule 9(b) requires that plaintiff set forth the 'who, what, when, where, and how' of the alleged fraud.") (citing *Williams*, 112 F.3d at 179).

WHEREFORE, Leegin Creative Leather Products, Inc. respectfully requests the entry of an order dismissing Plaintiffs' claims for fraud and for such other and further relief to which Leegin is justly entitled.

¹ Rule 9(b)'s particularity requirement applies equally to state law fraud claims. *Williams*, 112 F.3d at 177.

Dated: June 5, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Otis Carroll', is written over a horizontal line.

Otis Carroll

State Bar No. 03895700

Wesley Hill

State Bar No. 24032294

IRELAND, CARROLL & KELLEY, P.C.

6101 South Broadway, Suite 500

Tyler, TX 75703

(903) 561-1600

(903) 581-1071 (Fax)

and

Christopher J. Akin

State Bar No. 00793237

Jennifer Salisbury

State Bar No. 24007976

**CARRINGTON, COLEMAN SLOMAN
& BLUMENTHAL, L.L.P.**

200 Crescent Court, Suite 1500

Dallas, TX 75201

(214) 855-3000

(214) 855-1333 (Fax)

and

Tyler Baker

Texas State Bar No. 01595600

FENWICK & WEST LLP

Silicon Valley Center

801 California Street

Mountain View, CA 94041

(650) 955-8500

(650) 938-5200 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on the parties listed below, by first-class mail, postage prepaid on this 5th day of June, 2003:

Melissa Smith
Jack Baldwin
BALDWIN & BALDWIN, L.L.P.
400 West Houston Street
P. O. Drawer 1349
Marshall, TX 75671

Ken M. Peterson
Robert W. Coykendall
MORRIS, LAING, EVANS, BROCK & KENNEDY, CHARTERED
300 North Mead, Suite 200
Wichita, KS 67202-2722


Wesley Hill

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

(1) PSKS, Inc. d/b/a Kay's
Kloset...Kay's Shoes; and
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Civil Action No. 2:03-CV-107

(Ward)

**ORDER GRANTING DEFENDANT
LEEGIN CREATIVE LEATHER PRODUCTS, INC.'S
MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR FRAUD**

Having considered Defendant Leegin Creative Leather Product Inc.'s Motion to Dismiss Plaintiffs' Claims for Fraud, any response thereto, and the argument of counsel, the Court is of the opinion that the Motion has merit and should be granted. Accordingly, the Court hereby grants the Motion and dismisses Plaintiffs' claims for fraud with prejudice.

SO ORDERED this _____ day of _____, 2003.

United States District Court Judge